

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JOHN LEE BURROUGHS)
)
and)
)
ROSE BURROUGHS)
)
)
Plaintiffs,) Cause No: 4:07cv1944MLM
)
)
vs.)
)
MACKIE MOVING)
SYSTEMS CORPORATION, et al.)
)
)
Defendants.)

PLAINTIFFS' TRIAL BRIEF

COMES NOW Plaintiffs, by and through undersigned counsel, and for Plaintiffs' Trial Brief states as follows:

CASE SUMMARY

This matter arises out of a motor vehicle incident which occurred on March 9, 2007 at approximately 10:55 a.m. on eastbound Interstate 70 near Bryan Road in O'Fallon, Missouri. Plaintiff John Burroughs has filed suit for personal injuries arising from that incident and his wife Rose Burroughs has filed a claim for loss of consortium.

On March 9, 2007, at approximately 10:55 a.m., Plaintiff John Burroughs was driving a tanker truck for his employer, Flying J, Inc. The eastbound roadway is three lanes, except that the on-ramp from Bryan Road adds an additional lane for a short distance. At that time and place, Plaintiff John Burroughs was driving his truck in the far left lane.

At that same time and place, Joseph Currie was driving a tractor-trailer truck for Mackie Moving Systems Corporation (“Mackie”). Defendant Mackie has admitted that, at all times relevant, Currie was acting as an agent for Defendant Mackie. Currie was also driving his tractor-trailer on eastbound I-70 and was in the center lane, just to the right of Plaintiff John Burroughs. Suddenly, Currie swerved over into Burroughs’ lane. As a result, Burroughs swerved left where he nearly struck the concrete median. Burroughs applied his brakes and his tanker swung out from behind him. He fought the steering wheel to keep his tractor-trailer under control, and luckily, there were not any other automobiles involved in the incident.

This incident was witnessed by Lois Rohan and Robert Donovan, both of whom were driving their own cars at that time and place. Rohan testifies that she was coming off of Bryan Road and entering I-70. She testifies that cars in front of her started to merge onto I-70. This caused somewhat of a chain reaction which caused the Mackie truck to swerve into Plaintiff’s lane.

Donovan cannot recall seeing any cars swerve over from the Bryan Road on-ramp, but rather testified that the Mackie Truck came into Plaintiff’s lane and remained in that lane. Joseph Currie was later identified as being the driver of the Mackie truck because Donovan continued to follow him after he caused Burroughs to lose control. Donovan wrote down Currie’s license plate information and later contacted the police. Officer Eric Kessler later confirmed with Mackie that Currie was in fact driving that truck at that time and place.

In addition to filing suit against Defendant Mackie, Plaintiffs have filed suit against Zurich American Insurance Company and AMCO Insurance Company for

uninsured motorist coverage due to the actions of the unidentified motorists testified to by Lois Rohan. Zurich American Insurance Company issued a policy to John Burroughs' employer Flying J. The policy is applicable in this case as Burroughs was driving a company vehicle at the time of the wreck. Pursuant to the policy, there is \$25,000.00 of uninsured motorist coverage through Zurich American Insurance Company. Additionally, Plaintiffs' private autos are insured through AMCO Insurance Company. They have three insured automobiles, each with a \$50,000.00 per person uninsured motorist limit. Missouri law clearly prohibits stacking of UM coverages, *see e.g.*, *Cameron Mut. Ins. Co. v. Madden*, 533 S.W.2d 538. Thus, there is an available \$150,000.00 of uninsured motorist coverage, per person, from Defendant AMCO Insurance Company.

As a result of this incident, Plaintiff John Burroughs sustained an injury to his left elbow and an L5-S1 disc herniation. As he was working at the time of the incident, medical treatment was provided through the worker's compensation carrier. He underwent months of conservative care and ultimately underwent L5-S1 fusion on March 3, 2008. He incurred a total of \$98,134.47 of medical bills as a result of this incident. Plaintiffs will present the deposition testimony of the treating surgeon, Dr. James Coyle. Dr. Coyle testified that Mr. Burroughs' disc injury was caused or contributed to be caused by the March 9, 2007 motor vehicle incident. Dr. Coyle also testified that his physician charges, totaling \$30,522.00, were fair and reasonable. Plaintiff will present evidence of the additional conservative treatment through medical records and accompanying affidavits. Additionally, Plaintiff will present evidence of the costs of the

additional treatment by presenting billing records from each provider along with an accompanying affidavit certifying each charge was reasonable and necessary.

Plaintiffs do not anticipate any unusual legal issues or complications. Ultimately, the jury will be called upon to assess a percentage of fault among the parties (Plaintiff John Burroughs, Macking Moving Systems Corporation, and the insurance companies providing uninsured motorist coverage – Zurich American Insurance Company and AMCO Insurance Company) and to assess the damages necessary to fairly compensate Plaintiffs.

Schultz & Myers, LLC

By: /s/ Joshua P. Myers

Joshua P. Myers, ED #511892
13321 N. Outer 40 Rd., Ste 800
Chesterfield, MO 63017
Phone: (314) 448-4268
Fax: (314) 720-0744
Email: josh@schultzmyers.com
ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

A copy of the foregoing has been sent by electronic mail (E-mail) upon the following attorneys and parties via the Court's electronic filing system on the 11th day of May, 2010:

Paul Rauschenbach
Hahn, Enright, & Hansen
701 Market Street, Ste 450
St. Louis, MO 63101
Phone: (314) 588-2270
Fax: (314) 436-0546
Email: paul.rauschenbach@zurichna.com
ATTORNEY FOR DEFENDANT
MACKIE MOVING SYSTEMS CORP.

John Cooney
Danna McKitrick, P.C.
150 N. Meramec Ave., 4th Floor
St. Louis, Missouri 63105
Phone: (314) 726-1000
Fax: (314) 725-6592
E-mail: jcooney@dmfirm.com
ATTORNEY FOR DEFENDANT AMCO INS. CO.

Michael Donelson
Fox Galvin, LLC
One South Memorial Drive, 12th Floor
St. Louis, MO 63102
Phone: (314)588-7000
Fax: (314)588-1965
Email: mdonelson@foxgalvin.com
ATTORNEY FOR DEFENDANT
ZURICH AMERICAN INS. CO.

/s/ Joshua P. Myers